

CRAVATH, SWAINE & MOORE

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JUN 4 1979  
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RECORDATION NO. .... Filed 1425

JUN 1 1979 - 11 55 AM

INTERSTATE COMMERCE COMMISSION

10407-A

RECORDATION NO. .... Filed 1425

JUN 1 1979 - 11 55 AM

INTERSTATE COMMERCE COMMISSION  
MAY 31 1979

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CRAVATH, N.Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E. C. 2

The Dow Chemical Company

Lease Financing Dated as of April 15, 1979

9-3/4% Conditional Sale Indebtedness Due July 2, 1999

[CS&M Ref: 4020-014A]

Dear Mr. Homme:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of The Dow Chemical Company, for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement No. 1 dated as of April 15, 1979, between The Connecticut Bank and Trust Company, and Hawker Siddeley Canada, Ltd.; and

(b) Agreement and Assignment No. 1 dated as of April 15, 1979, between Mercantile-Safe Deposit and Trust Company and Hawker Siddeley Canada, Ltd.

The addresses of the parties to the aforementioned agreements are:

Trustee-Vendee-Lessor

The Connecticut Bank and Trust Company,  
One Constitution Plaza,  
Hartford, Connecticut 06115.

RECEIVED  
JUN 1 11 45 AM '79  
I.C.C. SECTION BR.  
FEE OPERATION BR.

*Handwritten signature: C. Swain*

Builder-Vendor

Hawker Siddeley Canada, Ltd.,  
P. O. Box 130,  
Trenton, Nova Scotia BOK 1X0

Agent-Vendor-Assignee

Mercantile-Safe Deposit and Trust Company,  
Two Hopkins Plaza,  
Baltimore, Maryland 21203

The equipment covered by the aforementioned agreements appears in Exhibit A attached hereto and also bearing the legend "Ownership Subject to a Security Agreement, The Connecticut Bank and Trust Company, Trustee, Owner, Mercantile-Safe Deposit and Trust Company, Trustee, Mortgagee".

Enclosed is our check for \$50 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned.

Very truly yours,

*Laurance V. Goodrich*

Laurance V. Goodrich,  
As Agent for The Dow  
Chemical Company

H. G. Homme, Jr., Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423.

Encls.

EXHIBIT A

<u>Type</u>	<u>Quantity</u>	<u>Road Numbers</u> <u>(Both Inclusive)</u>
Caustic Soda Cars	95	CGBX-6000, 6004, 6006, 6008, 6011-6018, 6023, 6025, 6026, 6029-6031, 6033-6109

*See 10409-B*  
*Change all members*

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[CS&M Ref: 4020-014A]

10407

RECORDATION NO. .... Filed 1425

JUN 1 1979 - 11 55 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT  
No. 1

Dated as of April 15, 1979

between

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Trustee

and

HAWKER SIDDELEY CANADA, LTD.

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CONDITIONAL SALE AGREEMENT No. 1 dated as of April 15, 1979, between HAWKER SIDDELEY CANADA LTD., a Canadian corporation (the "Vendor" or the "Builder" as more particularly set forth in Article 1 hereof), and THE CONNECTICUT BANK AND TRUST COMPANY, not individually but solely in its capacity as Trustee (the "Vendee"), under a Trust Agreement dated as of the date hereof (the "Trust Agreement"), with NEMLC Leasing Associates No. 1 (the "Beneficiary").

The Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (the "Equipment").

The Vendee is entering into a lease dated as of the date hereof with THE DOW CHEMICAL COMPANY (the "Lessee"), substantially in the form annexed hereto as Annex C (the "Lease").

Mercantile-Safe Deposit and Trust Company (the "Assignee" or the "Vendor") is acting as agent for a certain investor pursuant to the Participation Agreement dated as of the date hereof (the "Participation Agreement"), among the Assignee, the Beneficiary, the Lessee, the Vendee and such investor.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment No. 1 dated as of the date hereof between the Builder and the Assignee (the "Assignment").

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any

successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, substantially all right, title, and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment"), and the Lessee shall consent thereto pursuant to the Consent and Agreement in the form attached to Annex D (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B hereto, and the Builder will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transport (Canada), United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as then being applicable to each such unit of Equipment, and each such unit will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of its Equipment to the Vendee at the place or places specified in Annex B hereto, freight and storage charges, if any, prepaid and included in the Purchase Price (as hereinafter defined), in accordance with the

delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Lease have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and provided, further, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder (i) subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default or (ii) unless the Builder shall have been notified by the Assignee that the conditions contained in Paragraph 7 of the Participation Agreement have been met and the Builder shall have been notified by the Vendee that the conditions contained in Paragraph 8 of the Participation Agreement have been met or waived. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Vendee or the Assignee (a) of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) that any of the conditions contained in Paragraph 7 or 8 of the Participation Agreement have not been met or waived. The Builder's forbearance so to deliver shall not in any way adversely affect the rights of the Builder.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the second sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder on or prior to June 30, 1979, shall be excluded from this Agreement, and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Builder thereof and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom; and pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder thereof as provided in Paragraph 1 of the Participation Agreement; provided, however, that the foregoing shall not be applicable to the extent that such excluded Equipment is actually delivered and accepted under a conditional sale agreement of even date among the parties hereto but with the Trustee acting for a different beneficiary. To the extent that Equipment of the Builder is actually

settled for hereunder, the Lessee shall be relieved of any further obligation in respect thereof to the Builder.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, lockouts, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees or agents of the Lessee or of any subsidiary of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of its Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee or agent of the Lessee or of any subsidiary of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance"), stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall not have any further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment

excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to, the Vendee shall be held by the Vendee solely as trustee for the benefit of the Lessee.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto and are subject to increase or decrease as set forth in Item 2 of Annex A hereto. Such base price or prices are also subject to such increase or decrease as is agreed to by the Builder thereof, the Vendee, and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the invoice or invoices of the Builder delivered to the Vendee and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee (the "Invoices"); provided, however, that for all purposes of this Agreement other than for the purpose of determining the amount payable to the Builder pursuant to subparagraph (a) of the third paragraph hereof, the term Purchase Price shall be deemed to mean the amount specified in the Builder's invoice but expressed in United States dollars based on the actual cost to the Vendee and the Assignee of the Canadian dollars used to make the payments to the Builder pursuant to subparagraph (a) of the third paragraph of this Article and Section 4 of the Assignment. If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under

this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid). The Vendee shall take such other steps, including the execution of instruments of transfer, as it may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date or dates (not earlier than May 30, 1979, and not later than July 31, 1979, such later date being herein called the "Cut-Off Date"), occurring not more than five business days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Builder by written notice delivered to the Vendee and the Assignee at least four business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Boston, Massachusetts, Baltimore, Maryland, New York, New York, Hartford, Connecticut, or Toronto, Canada, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) not later than 11:00 a.m., New York City time, on the Closing Date with respect to each Group
- (i) an amount equal to 25.479302% of the aggregate Purchase Price of Equipment included in such Group plus
  - (ii) the amount, if any, by which (x) the remainder of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the Maximum Conditional Sale Indebtedness

specified in Item 6 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 39 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "Conditional Sale Indebtedness") shall be payable in 39 consecutive semiannual installments commencing July 2, 1980, to and including July 2, 1999 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a "Payment Date". The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on January 2, 1980, and on each Payment Date thereafter. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto, and such installments of principal will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months except that interest payable on January 2, 1980, shall be calculated on an actual elapsed 365-day basis.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 10-3/4% per annum.

All payments provided for in this Agreement shall

be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts except that payments under subparagraph (a) of the third paragraph of this Article 4 shall be made in Canadian Dollars. Except as provided in Articles 7 and 15 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale. Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 4 with respect to any Group shall be subject to the receipt by the Vendee of copies of the documents required to be furnished by the Builder pursuant to Section 4 of the Assignment in respect of such Group.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof) but not limiting the effect of Article 21 hereof, it is understood and agreed by the Vendor that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with its representations in the Participation Agreement, or the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment". As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences or Voluntary Terminations (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease (other than indemnity payments paid or payable to the Lessor in its individual capacity or to the Beneficiary under § 9 of the Lease and taxes and indemnities paid or payable to the Beneficiary under § 6 of the Lease) and (b) any and all payments or proceeds received for or with

respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or Voluntary Terminations) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or Voluntary Terminations) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Retention of Property and Security Interest in the Equipment. The Vendor shall and hereby does retain the property, and to the extent applicable a security interest, in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the

Lessee as provided in this Agreement and the Lease.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines

and penalties being hereinafter called impositions), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance, Termination and Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition, ordinary wear and tear excepted.

In the event that the Lease is terminated pursuant to § 7 of the Lease (a "Termination") or any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or any unit shall be taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States or Canadian Government (such occurrences being herein

called Casualty Occurrences), the Vendee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of an installment on the Conditional Sale Indebtedness after such notice from the Lessee has been received or on the Termination Date (as defined in the Lease) in the case of a Termination (each such date hereinafter called a Settlement Date), the Vendee shall, subject to the limitations contained in the last paragraph of Article 4 hereof, pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of such Settlement Date, together with an amount equal to accrued interest thereon (as hereinafter provided) and (ii) in the case of a Termination, a sum equal to the Termination Value (as hereinafter defined in this Article 7) of such unit subject to such Termination as of such Settlement Date. The Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of such unit, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) on the date of such payment to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness, together with all interest accrued on the portion of the Conditional Sale Indebtedness being prepaid. The Vendee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Assignee may request, calculated as provided in Article 4 hereof. In the event of the requisition for use by the United States or Canadian Government of any unit of the Equipment, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Conditional Sale Indebtedness in respect of such unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit).

For the purpose of this paragraph and the next succeeding paragraph hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

The Termination Value of any unit subject to a Termination shall be an amount equal to the Casualty Value thereof plus accrued interest thereon.

Upon payment by the Vendee to the Vendor (i) of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence or (ii) of the Termination Value of any unit subject to a Termination, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

**ARTICLE 8. Reports and Inspections.** On or before April 30 in each year, commencing with the year 1980, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than

running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement, The Connecticut Bank and Trust Company, Trustee, Owner, Mercantile-Safe Deposit and Trust Company, Trustee, Mortgagee", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia cus-

tomarily used by the Lessee or its affiliates or any permitted sublessees.

ARTICLE 10. Compliance with Laws and Rules.

During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transport (Canada), the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or

assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that, subject always to Paragraph 18 of the Participation Agreement, the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Builder and the Assignee from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto or a security interest therein remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that immediately prior to the time of delivery and acceptance of each unit of Equipment under this Agreement, the Builder will have good title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature, except (i) liens arising under the following Nova Scotia statutes: The Workmen's Compensation Act, Assessment Act, Health Services Tax Act, Labour Standards Code and The Power Corporation Act, which liens will be promptly discharged by the Builder, and (ii) the rights of any of the parties under the Participation Agreement and all Exhibits and Annexes thereto. It is understood and agreed that the Builder shall not be

responsible for or incur any liability in connection with the recording or filing or the failure to record or file this Agreement, the Lease or any other documents relating thereto or copies or notices thereof, under any laws in any jurisdiction in which such recording or filing may be required.

The Builder represents that it is not entering into this Agreement, or entering into any assignment of this Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor unless such sale, assignment, transfer or disposition is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Lessee) to a finance company, bank or trust company organized under the laws of the United States or any State thereof and having its principal office in the continental United States, having a combined capital and surplus of not less than \$50,000,000 that is appointed pursuant to Article VII of the Trust Agreement, and such bank or trust company expressly assumes, in writing, in form satisfactory to the Vendor, all the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver its Equipment in accordance herewith

or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and

be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 10 days after the date such payment is due and payable; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) any proceeding shall be commenced by or against the Beneficiary, the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or of the Lessee under the Lease or the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement or of the Lessee under the Lease and the Consent or of the Beneficiary under the Trust Agreement, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee, or the Lessee, or the Beneficiary, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such

trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(e) an Event of Default shall have occurred under the Lease,

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee, the Beneficiary and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the proviso in the second paragraph of § 4 of the Lease relating to the Lessee's rights of possession, use and assignment under § 12 of the Lease, cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination; provided, however, that such termination shall not be in derogation of or impair the rights of the Vendee to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under Section 10 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided herein), including the rights of the Vendee to sue for and recover damages provided for in Section 11(a) of the Lease upon the occurrence of an Event of Default under the Lease, and/or (ii) declare (a "Declaration of Default") the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof,

the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. The Vendee shall promptly notify the Vendor of any event of which it has knowledge which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement. Knowledge of the Vendee shall mean actual knowledge of an officer or employee of its Corporate Trust Department.

In the case of an event of default under subparagraph (c) above involving a proceeding against the Lessee, the Vendee shall have the option, for a period of 30 days after the commencement of such event of default, to prepay all, but not less than, the then outstanding Conditional Sale Indebtedness plus interest accrued to the date of such payment.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

Anything in this Agreement to the contrary notwithstanding, in the case of any event of default occurring hereunder due to the occurrence of an Event of Default under the Lease, the Vendor shall not, without the prior written consent of the Beneficiary, exercise any remedy or remedies provided herein or in the Lease in respect thereof during a 10-day period next following the giving of written notice to the Beneficiary constituting a Declaration of Default as above provided. During such 10-day period, the Vendee and/or the Beneficiary shall have the right to cure, on behalf of the Lessee, such Event of Default under the Lease. Such right to cure may be exercised any number of times throughout the term of the Lease whether or not the Lessee shall at any time repay any amounts so advanced in order to cure one or

more such defaults, and each such separate Event of Default occurring subsequent to an Event of Default which was theretofore cured by one or more such parties shall be subject to the notice requirement and the 10-day period during which the Vendor may not exercise his remedies as hereinabove provided. No party exercising any right to cure or any such right to cure shall obtain any lien, charge or encumbrance of any kind upon the Equipment or any rentals or other amounts payable therefor under the Lease in respect of any sums paid in connection with the exercise of such right or the curing of such Event of Default, nor shall any claims of such party against the Lessee for the repayment of such sums so advanced impair the prior right of the Vendor to the sums payable by the Lessee under the Lease; provided, however, that if no event of default hereunder shall then have occurred and be continuing and if all payments of Conditional Sale Indebtedness and interest thereon then due and owing shall have been made at the time of receipt by the Vendor from the Lessee of an overdue installment of rental or other sum under the Lease in respect of which the Vendee or the Beneficiary shall have made payment to the Vendor pursuant to this paragraph and/or any interest payable by the Lessee in respect of the late payment thereof, such installment or other sum and interest thereon shall be released to or at the written direction of the Vendee.

ARTICLE 16. Remedies. Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the

Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks of the Lessee or, at the expense of the Vendee, upon any other storage tracks, as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on any lines of railroad or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to

the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking

possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Vendee shall pay to the Vendor an amount equal to the interest rate on the unpaid Conditional Sale Indebtedness with respect to any such unit which shall not have been assembled, as hereinabove provided, by the date of such sale for each

day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then

in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and in all other places required by § 15 of the Lease; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish or cause to be furnished to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Purchase Order and the Participation Agreement and its exhibits, this Agreement exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses:

(a) to the Vendee, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy thereof to the Beneficiary and to GATX Leasing Corporation at such addresses as they shall have furnished for such purpose,

(b) to the Lessee at 2030 Dow Center, Midland, Michigan 48640, Attention of Corporate Treasury Department,

(c) to the Builder, at its address specified in Item 1 of Annex A hereto,

(d) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second and eighth paragraphs of Article 16 and under Articles 3, 6, 7, 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, undertakings and agreements herein made on the part of the Vendee, are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, subject to the limitations of Article 4, and this Agreement is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiary on account of this Agreement or on account of any representation, warranty, undertaking or agreement of the Vendee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor.

The Vendee agrees that it will not enter into any amendment to or modification of the Trust Agreement except as provided in Article VIII thereof.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any

assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the markings of the units of Equipment.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

HAWKER SIDDELEY CANADA LTD.,

by   
Vice President

[CORPORATE SEAL]

Attest:

  
Secretary

THE CONNECTICUT BANK AND TRUST COMPANY, as Owner Trustee as aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[CORPORATE SEAL]

Attest:

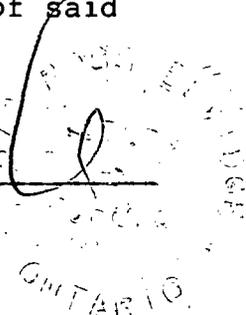
\_\_\_\_\_  
Authorized Officer

PROVINCE OF , )  
 )  
CITY OF , ) ss.:

On this 30<sup>th</sup> day of May 1979, before me personally appeared Ivan Bull, to me personally known, who, being by me duly sworn, says that he is a Vice President of HAWKER SIDDELEY CANADA LTD., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Eric R. [Signature]*

Notary Public



My Commission expires

STATE OF NEW YORK, )  
 )  
COUNTY OF NEW YORK, ) ss.:

On this            day of            1979, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

## SCHEDULE I

Allocation Schedule of Each \$1,000,000  
of 9-3/4% Conditional Sale Indebtedness Payable  
in Installments

<u>Payment Number</u>	<u>Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Remaining Principal Balance</u>
Interim	1/2/80	\$ *	\$ *	\$ -0-	\$1,000,000.00
1	7/2/80	55,028.47	48,750.00	6,278.47	993,721.53
2	1/2/81	55,028.47	48,443.92	6,584.55	987,136.98
3	7/2/81	55,028.47	48,122.93	6,905.54	980,231.44
4	1/2/82	55,028.47	47,786.28	7,242.19	972,989.25
5	7/2/82	55,028.47	47,433.23	7,595.24	965,394.01
6	1/2/83	55,028.47	47,062.96	7,965.51	957,428.50
7	7/2/83	55,028.47	46,674.64	8,353.83	949,074.67
8	1/2/84	55,028.47	46,267.39	8,761.08	940,313.59
9	7/2/84	55,028.47	45,840.29	9,188.18	931,125.41
10	1/2/85	55,028.47	45,392.36	9,636.11	921,489.30
11	7/2/85	55,028.47	44,922.60	10,105.87	911,383.43
12	1/2/86	55,028.47	44,429.94	10,598.53	900,784.90
13	7/2/86	55,028.47	43,913.26	11,115.21	889,669.69
14	1/2/87	55,028.47	43,371.40	11,657.07	878,012.62
15	7/2/87	55,028.47	42,803.12	12,225.35	865,787.27
16	1/2/88	55,028.47	42,207.13	12,821.34	852,965.93
17	7/2/88	55,028.47	41,582.09	13,446.38	839,519.55
18	1/2/89	55,028.47	40,926.58	14,101.89	825,417.66
19	7/2/89	55,028.47	40,239.11	14,789.36	810,628.30
20	1/2/90	55,028.47	39,518.13	15,510.34	795,117.96
21	7/2/90	67,257.01	38,762.00	28,495.01	766,622.95
22	1/2/91	67,257.01	37,372.87	29,884.14	736,738.81
23	7/2/91	67,257.01	35,916.02	31,340.99	705,397.82
24	1/2/92	67,257.01	34,388.14	32,868.87	672,528.95
25	7/2/92	67,257.01	32,785.79	34,471.22	638,057.73
26	1/2/93	67,257.01	31,105.31	36,151.70	601,906.03
27	7/2/93	67,257.01	29,342.92	37,914.09	563,991.94
28	1/2/94	67,257.01	27,494.61	39,762.40	524,229.54
29	7/2/94	67,257.01	25,556.19	41,700.82	482,528.72
30	1/2/95	67,257.01	23,523.28	43,733.73	438,795.99
31	7/2/95	67,257.01	21,391.26	45,865.75	392,929.24
32	1/2/96	67,257.01	19,155.30	48,101.71	344,827.53
33	7/2/96	67,257.01	16,810.34	50,446.67	294,380.88
34	1/2/97	67,257.01	14,351.07	52,905.94	241,474.94
35	7/2/97	67,257.01	11,771.90	55,485.11	185,989.83
36	1/2/98	67,257.01	9,067.00	58,190.01	127,799.82
37	7/2/98	67,257.01	6,230.24	61,026.77	66,773.05
38	1/2/99	67,257.01	3,255.19	64,001.82	2,771.23
39	7/2/99	2,906.33	135.10	2,771.23	.00
Totals		<u>\$2,314,101.91</u>	<u>\$1,314,101.91</u>	<u>\$1,000,000.00</u>	

\* Interest only in the Conditional Sale Indebtedness shall be payable to the extent accrued on this date.

## Annex A

to

## Conditional Sale Agreement

- Item 1: Hawker Siddeley Canada, Ltd., P.O. Box 130, Trenton, Nova Scotia BOK 1X0, Attention of Director of Finance and Administration.
- Item 2: The Equipment shall be settled for in not more than 2 Groups of units of the Equipment delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto. Unless the parties otherwise agree, the first Group shall be settled for on June 6, 1979, and the second Group shall be settled for on July 12, 1979. In the event that there are any changes in the standards referred to in the second sentence of Article 2 of the Conditional Sale Agreement subsequent to May 15, 1979, which result in an increase or decrease in the costs incurred by the Builder in complying therewith, then the base price per unit of Equipment shall be increased or decreased accordingly.
- Item 3: The Builder warrants that each unit of the Equipment at the time of delivery will conform to the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Annex is attached (the "Agreement") and warrants that each such unit will be free from defects in material (except as to specialties incorporated therein and workmanship with respect thereto specified by the Lessee and not manufactured by the Builder) and workmanship under normal use and service. The Builder's liability under this Item 3 is limited to repair or replacement at its plant at Trenton, Nova Scotia, of any part or parts of any such unit which shall, within one year after the delivery of such unit to the Vendee (or, in the case of patent defects, within 10 days after delivery), be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective. Any such unit which has been repaired, replaced or altered without the Builder's prior

written consent in such a manner as to affect its reliability or stability or which has been subject to improper maintenance, nonuse, misuse or accidental damage shall be excluded from this warranty. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER GUARANTIES, WARRANTIES AND CONDITIONS WHETHER EXPRESSED, IMPLIED STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE BUILDER DOES NOT ASSUME OR AUTHORIZE ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF ANY SUCH UNIT OF EQUIPMENT, EXCEPT FOR THE PATENT INDEMNIFICATION INCLUDED IN ITEM 4 HEREOF AND AS AFORESAID.

IN NO EVENT SHALL THE BUILDER BE LIABLE TO ANYONE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any such unit as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

- Item 4: Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee, the Beneficiary and the Lessee from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Beneficiary or the Lessee, their assigns or the users of the Equipment, because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Vendee, the Beneficiary and the Lessee will give prompt notice to the Builder of any claim known to them, respectively, from which liability may be charged against the Builder hereunder. At its expense and cost, the Builder with its counsel shall

defend such claim. The Vendee, the Beneficiary and the Lessee shall provide such information as they may possess reasonably to enable the Builder to defend such claim. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee, the Beneficiary and the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee, the Beneficiary and the Lessee or the users of its Equipment all and every such further assurance as may be reasonably requested more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$Can. 5,075,474.75 plus  $100/74.520698$  of 60.20% of the amount, if any, by which the investment of the Investor may be increased pursuant to Paragraph 2 of the Participation Agreement.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$Can. 3,782,279.21 plus 60.20% of the amount, if any, by which the investment of the Investor may be increased pursuant to Paragraph 2 of the Participation Agreement.

Annex B

to

Conditional Sale Agreement

<u>Type</u>	<u>Department of Transport Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
Hawker <u>Siddeley</u>	111-A-100W-1	Engineering Tank Car Data Sheet No. B-219 dated June 23, 1978, and General Arrangement Drawing No. A154F119 dated December 2, 1978.	Trenton, Nova Scotia	95	CGBX-6000, 6004, 6006, 6008, 6011-6018, 6023, 6025, 6026, 6029-6031, 6033-6109	\$Can. 53,426.05	\$Can. 5,075,474.75	May-June 1979 F.O.B. at Builder's plant, Trenton, Nova Scotia.

ANNEX C  
To  
Conditional Sale  
Agreements

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[CS&M Ref: 4020-014A]

LEASE OF RAILROAD EQUIPMENT

Dated as of April 15, 1979

between

THE DOW CHEMICAL COMPANY,  
as Lessee,

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Lessor.

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LEASE OF RAILROAD EQUIPMENT dated as of April 15, 1979, between THE DOW CHEMICAL COMPANY, a Delaware corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not individually but solely in its capacity as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement"), with NEMLC Leasing Associates No. 1 (the "Beneficiary").

WHEREAS the Lessor is entering into a Conditional Sale Agreement No. 1 dated as of the date hereof ("Conditional Sale Agreement No. 1") with Hawker Siddeley Canada, Ltd., a Canadian corporation ("Hawker"), wherein Hawker has agreed to manufacture, sell and deliver to the Lessor certain units of railroad equipment described in Schedule A hereto;

WHEREAS the Lessor is entering into a Conditional Sale Agreement No. 2 dated as of the date hereof ("Conditional Sale Agreement No. 2") with Procor Limited, a Canadian corporation ("Procor"), wherein Procor has agreed to manufacture, sell and deliver to the Lessor certain units of railroad equipment described in Schedule A hereto;

WHEREAS Hawker and Procor are hereinafter sometimes referred to individually as a "Builder" and collectively as the "Builders"; Conditional Sale Agreement No. 1 and Conditional Sale Agreement No. 2 are hereinafter referred to individually and collectively as the "Security Documentation"; and the units of railroad equipment described in Schedule A hereto are hereinafter referred to as the "Equipment";

WHEREAS the Builders are assigning their respective interests in the Security Documentation to Mercantile-Safe Deposit Bank and Trust Company, a Maryland banking corporation, acting as agent (together with its successors and assigns, the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Beneficiary and the party named in Schedule A thereto;

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and

settled for under the Security Documentation (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease, and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against either Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise,

to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within Canada at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee or of one of its subsidiaries to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance"), in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease. The inspection and acceptance by the Lessee of any Unit shall not in any way release any rights which the Lessee may have against the Builder thereof under any warranty relating to such Unit.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim rental payment on January 2, 1980, and 40 consecutive semiannual payments payable on January 2 and July 2 of each year, commencing on July 2, 1980, to and including January 2, 2000. The interim rental payable on January 2, 1980, shall be in an amount equal to .019906214 of the Purchase Price (as defined in the Security Documentation) of each Unit then subject to this Lease from the date of acceptance hereunder for each actual day elapsed to, but not including January 2, 1980. The first 20 semiannual rental payments shall be each

in an amount equal to 4.100760% of the Purchase Price of each Unit and the last 20 semiannual rental payments shall be each in an amount equal to 5.012039% of the Purchase Price of each Unit. In addition, as additional rental hereunder, the Lessee agrees to pay to the Lessor on the Cut-Off Date (as defined in the Participation Agreement) and on January 2, 1980, an amount equal to the amount required to be paid by the Lessor on each such date pursuant to the first and last paragraphs of Paragraph 9 of the Participation Agreement.

All rental payments payable hereunder shall be in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

If any of the rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Boston, Massachusetts, Baltimore, Maryland, Hartford, Connecticut, Midland, Michigan, or New York, New York, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing; provided that any indemnity payable to the Lessor in its individual capacity or to the Beneficiary pursuant to § 9 hereof and taxes and indemnities payable or reimbursed to the Beneficiary under § 6 hereof shall be paid by check of the Lessee directly to the party to receive the same. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds to the Vendor by 11:00 a.m., Baltimore time, on the date such payment is due.

All amounts earned in respect of the Units (including, without limitation, mileage charges) during the term of this Lease shall belong to the Lessee and, if received by the Lessor, shall be promptly turned over to the Lessee so long as no Default exists hereunder.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease or rescind its terms, all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or as otherwise directed by the Lessor, and in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement, The Connecticut Bank and Trust Company, Trustee, Owner, Mercantile-Safe Deposit and Trust Company, Trustee, Mortgagee" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and

of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) the Lessor shall have been given 180 days prior written notice from the Lessee of a proposed change, (ii) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (iii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect. Upon receipt by the Lessor of the notice referred to in clause (i) above with respect to any Unit, the Lessor at its option may direct the Lessee to have such Unit marked with a road number selected by the Lessor, and the Lessee at its own cost and expense shall forthwith cause the Unit to be marked as directed by the Lessor. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or any permitted sublessee.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiary for collection or other charges and will be free of expense to the Lessor (both in its individual and fiduciary capacity) and the Beneficiary with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax payable by the Beneficiary or the Lessor measured by net income based on the receipt of payments provided for herein and other than the aggregate of all state or local taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use,

payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay before they become delinquent in addition to the payments to be made by it provided for herein. The Lessee will also pay before they become delinquent all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof or on the Beneficiary solely by reason of its interest therein and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Beneficiary or result in a lien upon any such Unit; provided, however, that the Lessee shall not be under any obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor or the Beneficiary hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor and the Beneficiary notice of such contest within 30 days after institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment.

In the event that the Lessor shall become obligated to make any payment pursuant to Article 6 of the Security Documentation to any Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation or the Beneficiary shall become obligated to make payment to the Lessor pursuant to any similar provision with respect to taxes in the Trust Agreement not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the Beneficiary to fulfill completely its obligations pursuant to said provision.

In the event any reports with regard to impositions are required to be made, the Lessee will, where permitted so

to do under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor as shall be reasonably satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's and/or the Beneficiary's own name and on the Lessor's and/or the Beneficiary's behalf to perform such duties; provided, however, that the Lessee shall indemnify and hold the Lessor (both in its individual and fiduciary capacity) and the Beneficiary harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor may reasonably require to permit the Lessor's or the Beneficiary's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance, Casualty Occurrences, Insurance and Termination. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition. Each Unit will be maintained at least as well as other similar equipment owned or leased by the Lessee.

In the event that any Unit shall be or become lost,

stolen, destroyed or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States or Canadian Government (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale (after deduction of all reasonable selling costs) to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation in an amount equal to any payment made by the Builder to the Lessor in respect thereof under the Security Documentation.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal

to the Casualty Value of such Unit, which shall be an amount equal to 47.111% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale (after deduction of all reasonable selling costs) to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States or Canadian Government (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the United States or Canadian Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from such Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee shall, at its sole expense, obtain and maintain in full force and effect from the time any Unit is accepted by the Lessee and throughout the term of this Lease, insurance on each Unit from time to time subject hereto, with such insurers, covering such risks and for such insured values as the Lessor or the Vendor may reasonably require (i) in order to replace the Equipment in the event of an actual or constructive loss, including, but not limited to, insurance against the loss of, or damage to the Equipment as well as (ii) public liability and property damage insurance covering liability for personal injuries, death or property damage resulting from the ownership, maintenance, use or operation of the Equipment, in any manner whatsoever; provided, however, that the Lessee may self insure any or all of the Units if it, in its sole discretion, determines that the insurance required hereunder is not readily available or that such required insurance is unduly expensive. All insurance policies required hereby shall, without limitation of the foregoing, (i) contain a "breach of warranty" clause whereby the insurer agrees that a breach of the insuring conditions or any negligence by the Lessee, or by any party whose right to use or operate the Equipment is derived through the Lessee, shall not invalidate the insurance as to the Lessor and the Vendor and (ii) provide that the policy may not be canceled or materially altered without thirty (30) days' prior written notice to the Lessor and the Vendor. In the event, and to the extent, that the Lessee is not self insuring any or all of the Units, the Lessee hereby agrees to provide the Lessor and the Vendor with certificates evidencing the coverages specified in this paragraph; said certificates will be delivered to the Lessor and the Vendor on or before April 30 in each year, commencing with the year 1980.

In the event the Lessee fails, for the reasons stated above, to obtain or maintain any insurance which it is required to obtain and maintain hereunder, the Lessee will make such payments, hereinafter called "self insurance proceeds", and take such other action as would have been required to have been taken by each insurance company which would have been obligated in respect of such insurance had such insurance been obtained and maintained by the Lessee.

If the Lessor shall receive any insurance or self insurance proceeds from insurance maintained by the Lessee pursuant hereto or directly from the Lessee pursuant to the Lessee's right to self insure any or all of such Units or shall receive condemnation payments in respect of a Unit

suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee, and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance or self insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

In the event that the Lessee shall, in its reasonable judgment, determine that any Group (as hereinafter defined) of Units has become economically obsolete in the Lessee's business, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor, to terminate (hereinafter called a "Termination") this Lease as to such Group as of any succeeding rent payment date specified in such notice (the termination date specified in such notice being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 2, 1987, (ii) no Event of Default or other event which after the lapse of time or notice or both would become an Event of Default shall have occurred and be continuing and (iii) on the Termination Date each Unit in such Group shall be in the same condition as if being redelivered pursuant to § 14 hereof. For this purpose, the term "Group of Units" shall mean all units with the same Builder's Specifications (as set forth in Schedule A hereto) subject to this Lease at the Termination Date.

During the period from the 90th day after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all Units in such Group, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date the Lessor shall sell all Units in such Group for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor (i) the excess, if any, of the Termination Value for each such Unit computed as of such date over the sale price of such Unit after the deduction of all expenses incurred by the Lessor in connection with such sale and (ii) the rental payment due on such Termination Date. The Termination Value of each such Unit as of the payment date on which payment is to be made shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. In no event shall the aggregate amount retained by the Lessor and received by the Lessor as aforesaid be less than the Termination Value (as defined in the Security Documentation) as of such date.

If no sale shall occur on the date scheduled therefor as provided above, this Lease shall continue in full force and effect without change unless and until the Lessee pays the Lessor an amount equal to the Termination Value and returns any unsold Unit to the Lessor pursuant to § 14 hereof.

In the event of any such sale and the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all of the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all of the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

If the Lessee shall exercise its option to terminate, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given 90 days after the termination notice is given to the Lessor, elect to retain such Unit, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor; provided, however, that this Lease shall not terminate as to such Unit unless the Conditional Sale Indebtedness in respect of such Unit is prepaid on the Termination Date pursuant to Article 7 of the Security Documentation. In the event the

Lessor shall so elect to retain such Unit, the Lessee shall deliver such Unit to the Lessor in accordance with the provisions of § 14 hereof.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have

occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transport (Canada) and the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense, and title to any additions or improvements so made shall thereupon vest in the Lessor; provided, however, that the Lessee may at its own expense upon written notice thereof to the Lessor, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of

this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, and shall be removed by the Lessee, at its expense, upon or prior to return of any Unit to the Lessor pursuant to § 11 or § 14 hereof, unless the Lessor otherwise agrees.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities), the Beneficiary and the Vendor from and against all losses, damages, injuries, liabilities, (including, without limitation, strict liability in tort) claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documentation, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

The indemnities contained in this § 9 shall not extend to any loss, damage, injury, liability, claim, demand, cost, charge or expense incurred by any indemnified party (a) caused by the wilful misconduct or gross negligence of such indemnified party, (b) resulting from acts or events with respect to any Unit which commence after such Unit has been returned to the Lessor in accordance with § 14 hereof, (c) caused by the violation by such indemnified party of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee) or (d) arising from the breach of an

express duty, obligation, representation or warranty of such indemnified party made herein or in any of the documents related to the transactions contemplated hereby.

Upon request by the Lessor, the Lessee will prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns except as required by the provisions of § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for five business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Owner Trustee or the Owner Participant pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

(E) any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insol-

vency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(F) an event of default set forth in Article 15 of the Security Documentation shall have occurred as a result of any default by the Lessee in performing any of its obligations hereunder or under the Consent;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor

shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6.27% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of

any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee agrees to furnish the Vendee, the Beneficiary and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and meet the standards then required for a third party purchaser or third party lessee to immediately operate such Unit without further inspection, repair, replacement, alterations or improvements (excluding third party peculiar requirements for compatibility with then existing third party products, equipment or facilities) under the Interchange Rules of the

Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or any of its affiliates or, at the expense of the Lessee, on any other storage tracks, as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on any lines of railroad or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 45 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .027845% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall not be assignable in whole or in part by the Lessor without the consent of the Lessee, which consent shall not be unreasonably withheld except as provided in Article VII of the Trust Agreement. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns including the Vendor, except as may be limited in any assignment thereof.

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except and then only so long as the Lessee shall not then be in default under this Lease (and subject to this Lease and to the rights of the Lessor hereunder, and without releasing the Lessee from its obligations hereunder), to an Affiliate, or under a written sublease to a railroad classified by the Interstate Commerce Commission as a Class I railroad or to a major Canadian railroad or any other responsible company, as determined by the Lessee, subject in each case to the written consent of the Lessor, which shall not be unreasonably withheld; and the Lessee shall not, without such written consent, except as provided in this § 12 part with the possession of, or suffer or allow to pass out of its possession or control, any of the Units. The Lessor hereby consents to such a sublease to Dow Chemical of Canada, Limited. For the purpose of this § 12, "Affiliate" shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control (including controlled by and under common control with)", as

used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Lessor in respect of the Units covered by such sublease in the event of the happening of an Event of Default. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate or upon lines over which the Lessee or any such Affiliate has or obtains trackage or other operating rights or over which railroad equipment of the Lessee or any such Affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America and Canada. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

§ 13. Renewal Option and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six

months nor more than twelve months prior to the end of the original term elect to extend the term of this Lease in respect of all (but not fewer than all) the Units in any Group of Units (as defined in § 7 hereof) then covered by this Lease, for one additional six-year period commencing on the scheduled expiration of the original term at a "Fair Market Rental" payable in semiannual payments on each semi-annual anniversary of the original term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 40 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such

latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Lessor elects to sell any Units to third parties within a period of one year after the expiration of the original or any extended term of this Lease, the Lessee shall be given 60 days' prior written notice of such intention prior to the expiration of such period. In the event that during such one-year period the Lessor shall receive a bona fide offer from another party unrelated to the Lessee to purchase the Units and the Lessor elects to sell the Units pursuant to such offer, the Lessor shall give prompt written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party to the Lessor. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party. The Lessee may exercise such purchase right by delivery to the Lessor of a written notice within 15 days of receipt of notice of the proposed sale from the Lessor specifying a date of purchase, which date shall not be later than 20 days after the date of delivery of such notice by the Lessee to the Lessor.

§ 14. Return of Units upon Expiration of Term.

As soon as practicable but not longer than 60 days after the expiration of the original or extended term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of each Unit to the Lessor upon such storage tracks of the Lessee (at not more than three locations) as the Lessee may designate or on such other tracks as the Lessee and the Lessor may designate by mutual agreement and permit the Lessor to store such Unit on such

tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to the nearest railroad interconnection, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period, the Lessee will, at its own cost and expense, insure, maintain and keep each Unit in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards in effect upon the expiration of this Lease required for a third party purchaser or third party lessee to immediately operate such Unit without further inspection, repair, replacement, alterations or improvements (excluding third party peculiar requirements for compatibility with then existing third party products, equipment or facilities) under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 45 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .027845% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and each assignment hereof or thereof to be filed and recorded with (i) the Interstate Commerce Commission pursuant to 49 U.S.C.

§ 11303, (ii) in the applicable offices of British Columbia, Alberta, Saskatchewan, Ontario, Manitoba and Pictou County, Nova Scotia, and (iii) in the applicable office of each other county, province or territory in which any Unit will be used, subject to the proviso set forth in the next sentence. The Lessee will undertake, at its own expense, the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; provided, however, that the Lessee shall not be required to take any such action in respect of the jurisdictions referred to in clause (iii) above if (1) the Lessee deems such action to be unduly burdensome, (2) if after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title of the Lessor to, and the security interest of the Vendor in, Units having a fair market value of not less than 85% of all the Units then subject to this Lease and (3) any Unit at any time located in such jurisdiction shall have been marked with markings specified in § 5 hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording required by clause (iii) above, and an appropriate opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to the greater of (a) 11-7/8% per annum or (b) 2-1/2% above the rate per annum equal to the fluctuating base rate charged by New England Merchants National Bank to substantial and responsible commercial borrowers as such base rate shall change from time to time, each change in such rate to become effective on the effective date of each change in such base rate as announced by such Bank, on the overdue rentals and

other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy to the Beneficiary and to GATX Leasing Corporation at such addresses as they shall have furnished for such purpose; and

(b) if to the Lessee, at 2030 Dow Center, Midland, Michigan 48640, Attention of Corporate Treasury Department;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at Two Hopkins Plaza, P. O. Box 2258, Baltimore, Maryland 21203, Attention of Corporate Trust Department.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement, this Lease exclusively and completely states the rights and obligations of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original, and all other counterparts shall be deemed duplicates thereof. Although for

convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Michigan; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the markings of the units of Equipment.

§ 21. No Guaranty of Conditional Sale Indebtedness or Residual Value. Nothing in this Lease is intended or shall be construed to constitute a guaranty by the Lessee of the Conditional Sale Indebtedness of the Vendee under the Security Documentation or a guaranty of the residual value of any Unit.

§ 22. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, undertakings and agreements herein made on the part of the Lessor, are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Lease is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiary on account of this Lease or on account of any representation, warranty, undertaking or agreement of the Lessor or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee, the Vendor and by all persons

claiming by, through or under either of them.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

THE DOW CHEMICAL COMPANY,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Lessor as aforesaid,

by

\_\_\_\_\_

Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_

Authorized Officer

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF MIDLAND, )

On this            day of            1979 before me personally  
appeared            , to me personally known, who, being  
by me duly sworn, says that he is the            of THE  
DOW CHEMICAL COMPANY, that one of the seals affixed to the  
foregoing instrument is the corporate seal of said corporation,  
that said instrument was signed and sealed on behalf of said  
corporation by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument  
was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this            day of            1979 before me personally  
appeared            , to me personally known, who, being  
by me duly sworn, says that he is an Authorized Officer of THE  
CONNECTICUT BANK AND TRUST COMPANY, that one of the seals  
affixed to the foregoing instrument is the corporate seal of  
said corporation and that said instrument was signed and  
sealed on behalf of said corporation by authority of its  
Board of Directors and he acknowledged that the execution of  
the foregoing instrument was the free act and deed of said  
corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE

Type	Department of Transport Designation	Builder's Specifications	Builder's Plant	Quantity	Road Numbers (Both Inclusive)	Estimated Unit Base Price	Estimated Total Base Price	Estimated Time and Place of Delivery
Hawker-Siddeley								
Caustic Soda Cars	111-A-100W-1	Engineering Tank Car Data Sheet No. B-219 dated June 23, 1978, and General Arrangement Drawing No. A154F119 dated December 2, 1978.	Trenton, Nova Scotia	95	CGBX 6000, 6004, 6006, 6008, 6011-6018, 6023, 6025, 6026, 6029-6031 6033-6109	\$ Can. 53,426.05	\$ Can. 5,075,474.75	May-June 1979, F.O.B. at Builder's plant, Trenton, Nova Scotia.
Procor								
Vinyl Chloride Monomer Cars	105-A-300W	106/3	Sarnia, Ontario	22	DCLX 1075-1093, 1095-1097	60,251	1,325,522	May-June 1979, at Sarnia, Ontario.
Vinyl Chloride Monomer Cars	105-A-300W	106/3	Sarnia, Ontario	7	DCLX 1094, 1098-1103	61,332	429,324	May-June 1979, at Sarnia, Ontario.
Chlorine Cars	105-A-500W	108/2	Sarnia, Ontario	11	DCLX 3000-3008, 3010, 3011	60,850	669,350	May-June 1979, at Sarnia, Ontario.
Chlorine Cars	105-A-500W	108/2	Sarnia, Ontario	15	DCLX 3009, 3012-3025	62,060	930,900	May-June 1979, at Sarnia, Ontario.
				<u>150</u>			<u>\$ Can. 8,430,570.75</u>	

## SCHEDULE B TO LEASE

## Casualty and Termination Values

<u>Payment Date</u>	<u>Percentage</u>
January 2, 1980	111.499
July 2, 1980	112.607
January 2, 1981	113.022
July 2, 1981	113.627
January 2, 1982	114.115
July 2, 1982	114.474
January 2, 1983	114.725
July 2, 1983	114.859
January 2, 1984	114.890
July 2, 1984	114.806
January 2, 1985	114.623
July 2, 1985	114.330
January 2, 1986	113.942
July 2, 1986	113.450
January 2, 1987	112.872
July 2, 1987	112.255
January 2, 1988	111.606
July 2, 1988	110.924
January 2, 1989	110.205
July 2, 1989	109.450
January 2, 1990	108.541
July 2, 1990	106.518
January 2, 1991	104.394
July 2, 1991	102.163
January 2, 1992	99.820
July 2, 1992	97.359
January 2, 1993	94.775
July 2, 1993	92.062
January 2, 1994	89.212
July 2, 1994	86.220
January 2, 1995	83.079
July 2, 1995	79.781
January 2, 1996	76.319
July 2, 1996	72.684
January 2, 1997	68.868
July 2, 1997	65.061
January 2, 1998	61.597
July 2, 1998	58.094
January 2, 1999	54.535
July 2, 1999	50.890
January 2, 2000	47.111

ANNEX D  
to  
Conditional Sale Agreements

ASSIGNMENT OF LEASE AND AGREEMENT dated as of April 15, 1979 (this "Assignment"), by and between THE CONNECTICUT BANK AND TRUST COMPANY not individually but solely in its capacity as Owner Trustee (the "Lessor" or the "Vendee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with NEMLC Leasing Associates No. 1 (the "Beneficiary"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Vendee is entering into separate Conditional Sale Agreements dated as of the date hereof (the "Security Documentation") with each of Hawker Siddeley Canada, Ltd., and Procor Limited (the "Builders"), providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in the Annexes B thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and The Dow Chemical Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor agrees to assign to the Vendor for security purposes the Lessor's rights in, to and under the Lease;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee

under the Security Documentation, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, termination payment, indemnity, liquidated damages, or otherwise (the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease; provided that Payments shall not include any indemnity payable to the Lessor in its individual capacity or to the Beneficiary (as defined in the Lease) under § 6 or § 9 of the Lease, which shall be paid directly to the party to receive the same. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation, and, so long as no event of default shall have occurred and be continuing under the Security Documentation, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall forthwith notify the Lessor by telephone (confirmed in writing) or telegraph at the address set forth in the Lease; provided, however, that the failure of the Vendor so to notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease, and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than

created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, would become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law as reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the markings of the units of Equipment.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation,

or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no Event of Default under the Lease or event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the Security Documentation, the Lessor may, so long as no event of default under the Security Documentation or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce or avail itself of, such rights, powers, privileges and remedies arising out of subparagraph (a) of the first paragraph of § 10 of the Lease; provided, however, the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of subparagraph (b) of said § 10.

12. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof) (a) the terms of this Assignment shall not impose any obligations on the Lessor in addition to the obligations of the Lessor under the Lease or under the Security Documentation or in any way limit the effect of the last paragraph of Article 4 of the Security Documentation, Article 21 of the Security Documentation or Section 22 of the Lease, and (b) so long as there is no event of default under the Security Documentation, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the Security Documentation, the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the Security Documentation, or empower the Vendor in any way to waive or release the Lessee's obligation to pay such excess amounts, and the Lessor shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts, but shall not take any action under subparagraph (b) of Section 10 of the Lease without the written con-

sent of the Vendor, and (c) each and all of the representations, warranties, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said Bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by said Bank solely in the exercise of its powers expressly conferred upon it as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Bank, except for wilful misconduct or gross negligence, or against any Beneficiary under the Trust Agreement or on account of any representation, warranty, undertaking or agreement herein of the Lessor or any Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Owner Trustee as  
aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, as Agent,

by

[Corporate Seal]

\_\_\_\_\_  
Assistant Vice President

Attest:

\_\_\_\_\_  
Assistant Corporate  
Trust Officer



## CONSENT AND AGREEMENT

The undersigned, THE DOW CHEMICAL COMPANY, a Delaware corporation (the "Lessee"), the Lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all Payments (as defined in the Lease Assignment) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, by bank wire transfer of Federal funds by 11:00 a.m. Baltimore time to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent's Account No. 52076-1, with a request that The Annapolis Banking and Trust Company advise Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that the funds are "RE: Dow 4/15/79 No. 1" (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of Michigan and, for all purposes, shall be construed in accordance with the laws of said State.

THE DOW CHEMICAL COMPANY,

by

[Corporate Seal]

Attest:

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CONDITIONAL SALE AGREEMENT  
No. 1

Dated as of April 15, 1979

between

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Trustee

and

HAWKER SIDDELEY CANADA, LTD.

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CONDITIONAL SALE AGREEMENT No. 1 dated as of April 15, 1979, between HAWKER SIDDELEY CANADA, LTD., a Canadian corporation (the "Vendor" or the "Builder" as more particularly set forth in Article 1 hereof), and THE CONNECTICUT BANK AND TRUST COMPANY, not individually but solely in its capacity as Trustee (the "Vendee"), under a Trust Agreement dated as of the date hereof (the "Trust Agreement"), with NEMLC Leasing Associates No. 1 (the "Beneficiary").

The Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (the "Equipment").

The Vendee is entering into a lease dated as of the date hereof with THE DOW CHEMICAL COMPANY (the "Lessee"), substantially in the form annexed hereto as Annex C (the "Lease").

Mercantile-Safe Deposit and Trust Company (the "Assignee" or the "Vendor") is acting as agent for a certain investor pursuant to the Participation Agreement dated as of the date hereof (the "Participation Agreement"), among the Assignee, the Beneficiary, the Lessee, the Vendee and such investor.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment No. 1 dated as of the date hereof between the Builder and the Assignee (the "Assignment").

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any

successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, substantially all right, title, and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment"), and the Lessee shall consent thereto pursuant to the Consent and Agreement in the form attached to Annex D (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant described in Annex B hereto, and the Builder will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transport (Canada), United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as then being applicable to each such unit of Equipment, and each such unit will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of its Equipment to the Vendee at the place or places specified in Annex B hereto, freight and storage charges, if any, prepaid and included in the Purchase Price (as hereinafter defined), in accordance with the

delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Lease have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and provided, further, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder (i) subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default or (ii) unless the Builder shall have been notified by the Assignee that the conditions contained in Paragraph 7 of the Participation Agreement have been met and the Builder shall have been notified by the Vendee that the conditions contained in Paragraph 8 of the Participation Agreement have been met or waived. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Vendee or the Assignee (a) of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) that any of the conditions contained in Paragraph 7 or 8 of the Participation Agreement have not been met or waived. The Builder's forbearance so to deliver shall not in any way adversely affect the rights of the Builder.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the second sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder on or prior to June 30, 1979, shall be excluded from this Agreement, and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Builder thereof and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom; and pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder thereof as provided in Paragraph 1 of the Participation Agreement; provided, however, that the foregoing shall not be applicable to the extent that such excluded Equipment is actually delivered and accepted under a conditional sale agreement of even date among the parties hereto but with the Trustee acting for a different beneficiary. To the extent that Equipment of the Builder is actually

settled for hereunder, the Lessee shall be relieved of any further obligation in respect thereof to the Builder.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, lockouts, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees or agents of the Lessee or of any subsidiary of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of its Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee or agent of the Lessee or of any subsidiary of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance"), stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall not have any further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment

excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to, the Vendee shall be held by the Vendee solely as trustee for the benefit of the Lessee.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto and are subject to increase or decrease as set forth in Item 2 of Annex A hereto. Such base price or prices are also subject to such increase or decrease as is agreed to by the Builder thereof, the Vendee, and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the invoice or invoices of the Builder delivered to the Vendee and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee (the "Invoices"); provided, however, that for all purposes of this Agreement other than for the purpose of determining the amount payable to the Builder pursuant to subparagraph (a) of the third paragraph hereof, the term Purchase Price shall be deemed to mean the amount specified in the Builder's invoice but expressed in United States dollars based on the actual cost to the Vendee and the Assignee of the Canadian dollars used to make the payments to the Builder pursuant to subparagraph (a) of the third paragraph of this Article and Section 4 of the Assignment. If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under

this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid). The Vendee shall take such other steps, including the execution of instruments of transfer, as it may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date or dates (not earlier than May 30, 1979, and not later than July 31, 1979, such later date being herein called the "Cut-Off Date"), occurring not more than five business days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Builder by written notice delivered to the Vendee and the Assignee at least four business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Boston, Massachusetts, Baltimore, Maryland, New York, New York, Hartford, Connecticut, or Toronto, Canada, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) not later than 11:00 a.m., New York City time, on the Closing Date with respect to each Group
- (i) an amount equal to 25.479302% of the aggregate Purchase Price of Equipment included in such Group plus
  - (ii) the amount, if any, by which (x) the remainder of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the Maximum Conditional Sale Indebtedness

specified in Item 6 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 39 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "Conditional Sale Indebtedness") shall be payable in 39 consecutive semiannual installments commencing July 2, 1980, to and including July 2, 1999 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a "Payment Date". The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on January 2, 1980, and on each Payment Date thereafter. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto, and such installments of principal will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months except that interest payable on January 2, 1980, shall be calculated on an actual elapsed 365-day basis.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 10-3/4% per annum.

All payments provided for in this Agreement shall

be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts except that payments under subparagraph (a) of the third paragraph of this Article 4 shall be made in Canadian Dollars. Except as provided in Articles 7 and 15 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 4 with respect to any Group shall be subject to the receipt by the Vendee of copies of the documents required to be furnished by the Builder pursuant to Section 4 of the Assignment in respect of such Group.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof) but not limiting the effect of Article 21 hereof, it is understood and agreed by the Vendor that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with its representations in the Participation Agreement, or the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment". As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences or Voluntary Terminations (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease (other than indemnity payments paid or payable to the Lessor in its individual capacity or to the Beneficiary under § 9 of the Lease and taxes and indemnities paid or payable to the Beneficiary under § 6 of the Lease) and (b) any and all payments or proceeds received for or with

respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or Voluntary Terminations) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or Voluntary Terminations) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Retention of Property and Security Interest in the Equipment. The Vendor shall and hereby does retain the property, and to the extent applicable a security interest, in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the

Lessee as provided in this Agreement and the Lease.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines

and penalties being hereinafter called impositions), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance, Termination and Casualty Occurrences. The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition, ordinary wear and tear excepted.

In the event that the Lease is terminated pursuant to § 7 of the Lease (a "Termination") or any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or any unit shall be taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States or Canadian Government (such occurrences being herein

called Casualty Occurrences), the Vendee shall, promptly after it shall have received notice from the Lessee or has otherwise been informed of a Termination or that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of an installment on the Conditional Sale Indebtedness after such notice from the Lessee has been received or on the Termination Date (as defined in the Lease) in the case of a Termination (each such date hereinafter called a Settlement Date), the Vendee shall, subject to the limitations contained in the last paragraph of Article 4 hereof, pay to the Vendor (i) in the case of a Casualty Occurrence, a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of such Settlement Date, together with an amount equal to accrued interest thereon (as hereinafter provided) and (ii) in the case of a Termination, a sum equal to the Termination Value (as hereinafter defined in this Article 7) of such unit subject to such Termination as of such Settlement Date. The Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or the Termination Value of such unit, as the case may be. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) on the date of such payment to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness, together with all interest accrued on the portion of the Conditional Sale Indebtedness being prepaid. The Vendee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Assignee may request, calculated as provided in Article 4 hereof. In the event of the requisition for use by the United States or Canadian Government of any unit of the Equipment, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Conditional Sale Indebtedness in respect of such unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit).

For the purpose of this paragraph and the next succeeding paragraph hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

The Termination Value of any unit subject to a Termination shall be an amount equal to the Casualty Value thereof plus accrued interest thereon.

Upon payment by the Vendee to the Vendor (i) of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence or (ii) of the Termination Value of any unit subject to a Termination, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1980, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than

running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement, The Connecticut Bank and Trust Company, Trustee, Owner, Mercantile-Safe Deposit and Trust Company, Trustee, Mortgagee", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia cus-

tomarily used by the Lessee or its affiliates or any permitted sublessees.

ARTICLE 10. Compliance with Laws and Rules.

During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transport (Canada), the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or

assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that, subject always to Paragraph 18 of the Participation Agreement, the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Builder and the Assignee from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto or a security interest therein remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that immediately prior to the time of delivery and acceptance of each unit of Equipment under this Agreement, the Builder will have good title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature, except (i) liens arising under the following Nova Scotia statutes: The Workmen's Compensation Act, Assessment Act, Health Services Tax Act, Labour Standards Code and The Power Corporation Act, which liens will be promptly discharged by the Builder, and (ii) the rights of any of the parties under the Participation Agreement and all Exhibits and Annexes thereto. It is understood and agreed that the Builder shall not be

responsible for or incur any liability in connection with the recording or filing or the failure to record or file this Agreement, the Lease or any other documents relating thereto or copies or notices thereof, under any laws in any jurisdiction in which such recording or filing may be required.

The Builder represents that it is not entering into this Agreement, or entering into any assignment of this Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor unless such sale, assignment, transfer or disposition is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Lessee) to a finance company, bank or trust company organized under the laws of the United States or any State thereof and having its principal office in the continental United States, having a combined capital and surplus of not less than \$50,000,000 that is appointed pursuant to Article VII of the Trust Agreement, and such bank or trust company expressly assumes, in writing, in form satisfactory to the Vendor, all the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver its Equipment in accordance herewith

or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and

be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 10 days after the date such payment is due and payable; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) any proceeding shall be commenced by or against the Beneficiary, the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or of the Lessee under the Lease or the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee under this Agreement or of the Lessee under the Lease and the Consent or of the Beneficiary under the Trust Agreement, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee, or the Lessee, or the Beneficiary, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such

trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(e) an Event of Default shall have occurred under the Lease,

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee, the Beneficiary and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the proviso in the second paragraph of § 4 of the Lease relating to the Lessee's rights of possession, use and assignment under § 12 of the Lease, cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination; provided, however, that such termination shall not be in derogation of or impair the rights of the Vendee to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under Section 10 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided herein), including the rights of the Vendee to sue for and recover damages provided for in Section 11(a) of the Lease upon the occurrence of an Event of Default under the Lease, and/or (ii) declare (a "Declaration of Default") the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof,

the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. The Vendee shall promptly notify the Vendor of any event of which it has knowledge which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement. Knowledge of the Vendee shall mean actual knowledge of an officer or employee of its Corporate Trust Department.

In the case of an event of default under subparagraph (c) above involving a proceeding against the Lessee, the Vendee shall have the option, for a period of 30 days after the commencement of such event of default, to prepay all, but not less than, the then outstanding Conditional Sale Indebtedness plus interest accrued to the date of such payment.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

Anything in this Agreement to the contrary notwithstanding, in the case of any event of default occurring hereunder due to the occurrence of an Event of Default under the Lease, the Vendor shall not, without the prior written consent of the Beneficiary, exercise any remedy or remedies provided herein or in the Lease in respect thereof during a 10-day period next following the giving of written notice to the Beneficiary constituting a Declaration of Default as above provided. During such 10-day period, the Vendee and/or the Beneficiary shall have the right to cure, on behalf of the Lessee, such Event of Default under the Lease. Such right to cure may be exercised any number of times throughout the term of the Lease whether or not the Lessee shall at any time repay any amounts so advanced in order to cure one or

more such defaults, and each such separate Event of Default occurring subsequent to an Event of Default which was theretofore cured by one or more such parties shall be subject to the notice requirement and the 10-day period during which the Vendor may not exercise his remedies as hereinabove provided. No party exercising any right to cure or any such right to cure shall obtain any lien, charge or encumbrance of any kind upon the Equipment or any rentals or other amounts payable therefor under the Lease in respect of any sums paid in connection with the exercise of such right or the curing of such Event of Default, nor shall any claims of such party against the Lessee for the repayment of such sums so advanced impair the prior right of the Vendor to the sums payable by the Lessee under the Lease; provided, however, that if no event of default hereunder shall then have occurred and be continuing and if all payments of Conditional Sale Indebtedness and interest thereon then due and owing shall have been made at the time of receipt by the Vendor from the Lessee of an overdue installment of rental or other sum under the Lease in respect of which the Vendee or the Beneficiary shall have made payment to the Vendor pursuant to this paragraph and/or any interest payable by the Lessee in respect of the late payment thereof, such installment or other sum and interest thereon shall be released to or at the written direction of the Vendee.

ARTICLE 16. Remedies. Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the

Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks of the Lessee or, at the expense of the Vendee, upon any other storage tracks, as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on any lines of railroad or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to

the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking

possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Vendee shall pay to the Vendor an amount equal to the interest rate on the unpaid Conditional Sale Indebtedness with respect to any such unit which shall not have been assembled, as hereinabove provided, by the date of such sale for each

day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then

in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and in all other places required by § 15 of the Lease; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish or cause to be furnished to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Purchase Order and the Participation Agreement and its exhibits, this Agreement exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses:

(a) to the Vendee, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy thereof to the Beneficiary and to GATX Leasing Corporation at such addresses as they shall have furnished for such purpose,

(b) to the Lessee at 2030 Dow Center, Midland, Michigan 48640, Attention of Corporate Treasury Department,

(c) to the Builder, at its address specified in Item 1 of Annex A hereto,

(d) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second and eighth paragraphs of Article 16 and under Articles 3, 6, 7, 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, undertakings and agreements herein made on the part of the Vendee, are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, subject to the limitations of Article 4, and this Agreement is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiary on account of this Agreement or on account of any representation, warranty, undertaking or agreement of the Vendee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor.

The Vendee agrees that it will not enter into any amendment to or modification of the Trust Agreement except as provided in Article VIII thereof.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any

assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the markings of the units of Equipment.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

HAWKER SIDDELEY CANADA, LTD.,

by

[CORPORATE SEAL]

\_\_\_\_\_  
Vice President

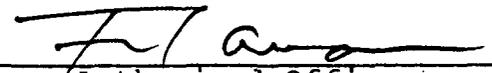
Attest:

\_\_\_\_\_  
Secretary

THE CONNECTICUT BANK AND TRUST COMPANY, as Owner Trustee as aforesaid,

by

[CORPORATE SEAL]

  
\_\_\_\_\_  
Authorized Officer

Attest:

  
\_\_\_\_\_  
Authorized Officer

PROVINCE OF , )  
 )  
CITY OF , ) ss.:

On this            day of            1979, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of HAWKER SIDDELEY CANADA, LTD., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

My Commission expires

STATE OF NEW YORK, )  
 )  
COUNTY OF NEW YORK, ) ss.:

On this 30th day of MAY 1979, before me personally appeared F.W. Kawam, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Rita J. Bradley  
\_\_\_\_\_  
Notary Public

RITA J. BRADLEY  
NOTARY PUBLIC, State of New York  
No. 30-4880401  
Qualified in Nassau County  
Certificate Filed in New York County  
Commission Expires March 30, 1980

[Notarial Seal]

My Commission expires

## SCHEDULE I

Allocation Schedule of Each \$1,000,000  
of 9-3/4% Conditional Sale Indebtedness Payable  
in Installments

<u>Payment Number</u>	<u>Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Remaining Principal Balance</u>
Interim	1/2/80	\$ *	\$ *	\$ -0-	\$1,000,000.00
1	7/2/80	55,028.47	48,750.00	6,278.47	993,721.53
2	1/2/81	55,028.47	48,443.92	6,584.55	987,136.98
3	7/2/81	55,028.47	48,122.93	6,905.54	980,231.44
4	1/2/82	55,028.47	47,786.28	7,242.19	972,989.25
5	7/2/82	55,028.47	47,433.23	7,595.24	965,394.01
6	1/2/83	55,028.47	47,062.96	7,965.51	957,428.50
7	7/2/83	55,028.47	46,674.64	8,353.83	949,074.67
8	1/2/84	55,028.47	46,267.39	8,761.08	940,313.59
9	7/2/84	55,028.47	45,840.29	9,188.18	931,125.41
10	1/2/85	55,028.47	45,392.36	9,636.11	921,489.30
11	7/2/85	55,028.47	44,922.60	10,105.87	911,383.43
12	1/2/86	55,028.47	44,429.94	10,598.53	900,784.90
13	7/2/86	55,028.47	43,913.26	11,115.21	889,669.69
14	1/2/87	55,028.47	43,371.40	11,657.07	878,012.62
15	7/2/87	55,028.47	42,803.12	12,225.35	865,787.27
16	1/2/88	55,028.47	42,207.13	12,821.34	852,965.93
17	7/2/88	55,028.47	41,582.09	13,446.38	839,519.55
18	1/2/89	55,028.47	40,926.58	14,101.89	825,417.66
19	7/2/89	55,028.47	40,239.11	14,789.36	810,628.30
20	1/2/90	55,028.47	39,518.13	15,510.34	795,117.96
21	7/2/90	67,257.01	38,762.00	28,495.01	766,622.95
22	1/2/91	67,257.01	37,372.87	29,884.14	736,738.81
23	7/2/91	67,257.01	35,916.02	31,340.99	705,397.82
24	1/2/92	67,257.01	34,388.14	32,868.87	672,528.95
25	7/2/92	67,257.01	32,785.79	34,471.22	638,057.73
26	1/2/93	67,257.01	31,105.31	36,151.70	601,906.03
27	7/2/93	67,257.01	29,342.92	37,914.09	563,991.94
28	1/2/94	67,257.01	27,494.61	39,762.40	524,229.54
29	7/2/94	67,257.01	25,556.19	41,700.82	482,528.72
30	1/2/95	67,257.01	23,523.28	43,733.73	438,795.99
31	7/2/95	67,257.01	21,391.26	45,865.75	392,929.24
32	1/2/96	67,257.01	19,155.30	48,101.71	344,827.53
33	7/2/96	67,257.01	16,810.34	50,446.67	294,380.88
34	1/2/97	67,257.01	14,351.07	52,905.94	241,474.94
35	7/2/97	67,257.01	11,771.90	55,485.11	185,989.83
36	1/2/98	67,257.01	9,067.00	58,190.01	127,799.82
37	7/2/98	67,257.01	6,230.24	61,026.77	66,773.05
38	1/2/99	67,257.01	3,255.19	64,001.82	2,771.23
39	7/2/99	<u>2,906.33</u>	<u>135.10</u>	<u>2,771.23</u>	.00
Totals		<u>\$2,314,101.91</u>	<u>\$1,314,101.91</u>	<u>\$1,000,000.00</u>	

\* Interest only in the Conditional Sale Indebtedness shall be payable to the extent accrued on this date.

## Annex A

to

## Conditional Sale Agreement

- Item 1: Hawker Siddeley Canada, Ltd., P.O. Box 130, Trenton, Nova Scotia BOK 1X0, Attention of Director of Finance and Administration.
- Item 2: The Equipment shall be settled for in not more than 2 Groups of units of the Equipment delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto. Unless the parties otherwise agree, the first Group shall be settled for on June 6, 1979, and the second Group shall be settled for on July 12, 1979. In the event that there are any changes in the standards referred to in the second sentence of Article 2 of the Conditional Sale Agreement subsequent to May 15, 1979, which result in an increase or decrease in the costs incurred by the Builder in complying therewith, then the base price per unit of Equipment shall be increased or decreased accordingly.
- Item 3: The Builder warrants that each unit of the Equipment at the time of delivery will conform to the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Annex is attached (the "Agreement") and warrants that each such unit will be free from defects in material (except as to specialties incorporated therein and workmanship with respect thereto specified by the Lessee and not manufactured by the Builder) and workmanship under normal use and service. The Builder's liability under this Item 3 is limited to repair or replacement at its plant at Trenton, Nova Scotia, of any part or parts of any such unit which shall, within one year after the delivery of such unit to the Vendee (or, in the case of patent defects, within 10 days after delivery), be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective. Any such unit which has been repaired, replaced or altered without the Builder's prior

written consent in such a manner as to affect its reliability or stability or which has been subject to improper maintenance, nonuse, misuse or accidental damage shall be excluded from this warranty. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER GUARANTIES, WARRANTIES AND CONDITIONS WHETHER EXPRESSED, IMPLIED STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE BUILDER DOES NOT ASSUME OR AUTHORIZE ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF ANY SUCH UNIT OF EQUIPMENT, EXCEPT FOR THE PATENT INDEMNIFICATION INCLUDED IN ITEM 4 HEREOF AND AS AFORESAID.

IN NO EVENT SHALL THE BUILDER BE LIABLE TO ANYONE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any such unit as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee, the Beneficiary and the Lessee from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Beneficiary or the Lessee, their assigns or the users of the Equipment, because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Vendee, the Beneficiary and the Lessee will give prompt notice to the Builder of any claim known to them, respectively, from which liability may be charged against the Builder hereunder. At its expense and cost, the Builder with its counsel shall

defend such claim. The Vendee, the Beneficiary and the Lessee shall provide such information as they may possess reasonably to enable the Builder to defend such claim. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee, the Beneficiary and the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee, the Beneficiary and the Lessee or the users of its Equipment all and every such further assurance as may be reasonably requested more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$Can. 5,075,474.75 plus 100/74.520698 of 60.20% of the amount, if any, by which the investment of the Investor may be increased pursuant to Paragraph 2 of the Participation Agreement.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$Can. 3,782,279.21 plus 60.20% of the amount, if any, by which the investment of the Investor may be increased pursuant to Paragraph 2 of the Participation Agreement.

to

Conditional Sale Agreement

<u>Type</u>	<u>Department of Transport Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Road Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
Hawker <u>Siddeley</u>	111-A-100W-1	Engineering Tank Car Data Sheet No. B-219 dated June 23, 1978, and General Arrangement Drawing No. A154F119 dated December 2, 1978.	Trenton, Nova Scotia	95	CGBX-6000, 6004, 6006, 6008, 6011-6018, 6023, 6025, 6026, 6029-6031, 6033-6109	\$Can. 53,426.05	\$Can. 5,075,474.75	May-June 1979 F.O.B. at Builder's plant, Trenton, Nova Scotia.

ANNEX C  
To  
Conditional Sale  
Agreements

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[CS&M Ref: 4020-014A]

LEASE OF RAILROAD EQUIPMENT

Dated as of April 15, 1979.

between

THE DOW CHEMICAL COMPANY,  
as Lessee,

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Lessor.

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LEASE OF RAILROAD EQUIPMENT dated as of April 15, 1979, between THE DOW CHEMICAL COMPANY, a Delaware corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not individually but solely in its capacity as Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement"), with NEMLC Leasing Associates No. 1 (the "Beneficiary").

WHEREAS the Lessor is entering into a Conditional Sale Agreement No. 1 dated as of the date hereof ("Conditional Sale Agreement No. 1") with Hawker Siddeley Canada, Ltd., a Canadian corporation ("Hawker"), wherein Hawker has agreed to manufacture, sell and deliver to the Lessor certain units of railroad equipment described in Schedule A hereto;

WHEREAS the Lessor is entering into a Conditional Sale Agreement No. 2 dated as of the date hereof ("Conditional Sale Agreement No. 2") with Procor Limited, a Canadian corporation ("Procor"), wherein Procor has agreed to manufacture, sell and deliver to the Lessor certain units of railroad equipment described in Schedule A hereto;

WHEREAS Hawker and Procor are hereinafter sometimes referred to individually as a "Builder" and collectively as the "Builders"; Conditional Sale Agreement No. 1 and Conditional Sale Agreement No. 2 are hereinafter referred to individually and collectively as the "Security Documentation"; and the units of railroad equipment described in Schedule A hereto are hereinafter referred to as the "Equipment";

WHEREAS the Builders are assigning their respective interests in the Security Documentation to Mercantile-Safe Deposit Bank and Trust Company, a Maryland banking corporation, acting as agent (together with its successors and assigns, the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Beneficiary and the party named in Schedule A thereto;

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and

settled for under the Security Documentation (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease, and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against either Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise,

to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final, and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within Canada at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee or of one of its subsidiaries to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance"), in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease. The inspection and acceptance by the Lessee of any Unit shall not in any way release any rights which the Lessee may have against the Builder thereof under any warranty relating to such Unit.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim rental payment on January 2, 1980, and 40 consecutive semiannual payments payable on January 2 and July 2 of each year, commencing on July 2, 1980, to and including January 2, 2000. The interim rental payable on January 2, 1980, shall be in an amount equal to .019906214 of the Purchase Price (as defined in the Security Documentation) of each Unit then subject to this Lease from the date of acceptance hereunder for each actual day elapsed to, but not including January 2, 1980. The first 20 semiannual rental payments shall be each

in an amount equal to 4.100760% of the Purchase Price of each Unit and the last 20 semiannual rental payments shall be each in an amount equal to 5.012039% of the Purchase Price of each Unit. In addition, as additional rental hereunder, the Lessee agrees to pay to the Lessor on the Cut-Off Date (as defined in the Participation Agreement) and on January 2, 1980, an amount equal to the amount required to be paid by the Lessor on each such date pursuant to the first and last paragraphs of Paragraph 9 of the Participation Agreement.

All rental payments payable hereunder shall be in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

If any of the rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Boston, Massachusetts, Baltimore, Maryland, Hartford, Connecticut, Midland, Michigan, or New York, New York, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing; provided that any indemnity payable to the Lessor in its individual capacity or to the Beneficiary pursuant to § 9 hereof and taxes and indemnities payable or reimbursed to the Beneficiary under § 6 hereof shall be paid by check of the Lessee directly to the party to receive the same. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds to the Vendor by 11:00 a.m., Baltimore time, on the date such payment is due.

All amounts earned in respect of the Units (including, without limitation, mileage charges) during the term of this Lease shall belong to the Lessee and, if received by the Lessor, shall be promptly turned over to the Lessee so long as no Default exists hereunder.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease or rescind its terms, all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment under § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or as otherwise directed by the Lessor, and in the case of any Unit not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement, The Connecticut Bank and Trust Company, Trustee, Owner, Mercantile-Safe Deposit and Trust Company, Trustee, Mortgagee" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and

of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) the Lessor shall have been given 180 days prior written notice from the Lessee of a proposed change, (ii) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (iii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect. Upon receipt by the Lessor of the notice referred to in clause (i) above with respect to any Unit, the Lessor at its option may direct the Lessee to have such Unit marked with a road number selected by the Lessor, and the Lessee at its own cost and expense shall forthwith cause the Unit to be marked as directed by the Lessor. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or any permitted sublessee.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiary for collection or other charges and will be free of expense to the Lessor (both in its individual and fiduciary capacity) and the Beneficiary with respect to the amount of any local, state, Federal or foreign taxes (other than any United States Federal income tax payable by the Beneficiary or the Lessor measured by net income based on the receipt of payments provided for herein and other than the aggregate of all state or local taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use,

payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay before they become delinquent in addition to the payments to be made by it provided for herein. The Lessee will also pay before they become delinquent all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof or on the Beneficiary solely by reason of its interest therein and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Beneficiary or result in a lien upon any such Unit; provided, however, that the Lessee shall not be under any obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor or the Beneficiary hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor and the Beneficiary notice of such contest within 30 days after institution thereof, and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment.

In the event that the Lessor shall become obligated to make any payment pursuant to Article 6 of the Security Documentation to any Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation or the Beneficiary shall become obligated to make payment to the Lessor pursuant to any similar provision with respect to taxes in the Trust Agreement not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the Beneficiary to fulfill completely its obligations pursuant to said provision.

In the event any reports with regard to impositions are required to be made, the Lessee will, where permitted so

to do under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor as shall be reasonably satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's and/or the Beneficiary's own name and on the Lessor's and/or the Beneficiary's behalf to perform such duties; provided, however, that the Lessee shall indemnify and hold the Lessor (both in its individual and fiduciary capacity) and the Beneficiary harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor may reasonably require to permit the Lessor's or the Beneficiary's compliance with the requirements of taxing jurisdictions.

§ 7. Maintenance, Casualty Occurrences, Insurance and Termination. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition. Each Unit will be maintained at least as well as other similar equipment owned or leased by the Lessee.

In the event that any Unit shall be or become lost,

stolen, destroyed or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States or Canadian Government (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale (after deduction of all reasonable selling costs) to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation in an amount equal to any payment made by the Builder to the Lessor in respect thereof under the Security Documentation.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal

to the Casualty Value of such Unit, which shall be an amount equal to 47.111% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale (after deduction of all reasonable selling costs) to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States or Canadian Government (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the United States or Canadian Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from such Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee shall, at its sole expense, obtain and maintain in full force and effect from the time any Unit is accepted by the Lessee and throughout the term of this Lease, insurance on each Unit from time to time subject hereto, with such insurers, covering such risks and for such insured values as the Lessor or the Vendor may reasonably require (i) in order to replace the Equipment in the event of an actual or constructive loss, including, but not limited to, insurance against the loss of, or damage to the Equipment as well as (ii) public liability and property damage insurance covering liability for personal injuries, death or property damage resulting from the ownership, maintenance, use or operation of the Equipment, in any manner whatsoever; provided, however, that the Lessee may self insure any or all of the Units if it, in its sole discretion, determines that the insurance required hereunder is not readily available or that such required insurance is unduly expensive. All insurance policies required hereby shall, without limitation of the foregoing, (i) contain a "breach of warranty" clause whereby the insurer agrees that a breach of the insuring conditions or any negligence by the Lessee, or by any party whose right to use or operate the Equipment is derived through the Lessee, shall not invalidate the insurance as to the Lessor and the Vendor and (ii) provide that the policy may not be canceled or materially altered without thirty (30) days' prior written notice to the Lessor and the Vendor. In the event, and to the extent, that the Lessee is not self insuring any or all of the Units, the Lessee hereby agrees to provide the Lessor and the Vendor with certificates evidencing the coverages specified in this paragraph; said certificates will be delivered to the Lessor and the Vendor on or before April 30 in each year, commencing with the year 1980.

In the event the Lessee fails, for the reasons stated above, to obtain or maintain any insurance which it is required to obtain and maintain hereunder, the Lessee will make such payments, hereinafter called "self insurance proceeds", and take such other action as would have been required to have been taken by each insurance company which would have been obligated in respect of such insurance had such insurance been obtained and maintained by the Lessee.

If the Lessor shall receive any insurance or self insurance proceeds from insurance maintained by the Lessee pursuant hereto or directly from the Lessee pursuant to the Lessee's right to self insure any or all of such Units or shall receive condemnation payments in respect of a Unit

suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value paid by the Lessee, and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance or self insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

In the event that the Lessee shall, in its reasonable judgment, determine that any Group (as hereinafter defined) of Units has become economically obsolete in the Lessee's business, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor, to terminate (hereinafter called a "Termination") this Lease as to such Group as of any succeeding rent payment date specified in such notice (the termination date specified in such notice being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 2, 1987, (ii) no Event of Default or other event which after the lapse of time or notice or both would become an Event of Default shall have occurred and be continuing and (iii) on the Termination Date each Unit in such Group shall be in the same condition as if being redelivered pursuant to § 14 hereof. For this purpose, the term "Group of Units" shall mean all units with the same Builder's Specifications (as set forth in Schedule A hereto) subject to this Lease at the Termination Date.

During the period from the 90th day after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all Units in such Group, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date the Lessor shall sell all Units in such Group for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor (i) the excess, if any, of the Termination Value for each such Unit computed as of such date over the sale price of such Unit after the deduction of all expenses incurred by the Lessor in connection with such sale and (ii) the rental payment due on such Termination Date. The Termination Value of each such Unit as of the payment date on which payment is to be made shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date. In no event shall the aggregate amount retained by the Lessor and received by the Lessor as aforesaid be less than the Termination Value (as defined in the Security Documentation) as of such date.

If no sale shall occur on the date scheduled therefor as provided above, this Lease shall continue in full force and effect without change unless and until the Lessee pays the Lessor an amount equal to the Termination Value and returns any unsold Unit to the Lessor pursuant to § 14 hereof.

In the event of any such sale and the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Unit on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all of the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all of the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

If the Lessee shall exercise its option to terminate, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given 90 days after the termination notice is given to the Lessor, elect to retain such Unit, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor; provided, however, that this Lease shall not terminate as to such Unit unless the Conditional Sale Indebtedness in respect of such Unit is prepaid on the Termination Date pursuant to Article 7 of the Security Documentation. In the event the

Lessor shall so elect to retain such Unit, the Lessee shall deliver such Unit to the Lessor in accordance with the provisions of § 14 hereof.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have

occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transport (Canada) and the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense, and title to any additions or improvements so made shall thereupon vest in the Lessor; provided, however, that the Lessee may at its own expense upon written notice thereof to the Lessor, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of

this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, and shall be removed by the Lessee, at its expense, upon or prior to return of any Unit to the Lessor pursuant to § 11 or § 14 hereof, unless the Lessor otherwise agrees.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities), the Beneficiary and the Vendor from and against all losses, damages, injuries, liabilities, (including, without limitation, strict liability in tort) claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documentation, the Participation Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

The indemnities contained in this § 9 shall not extend to any loss, damage, injury, liability, claim, demand, cost, charge or expense incurred by any indemnified party (a) caused by the wilful misconduct or gross negligence of such indemnified party, (b) resulting from acts or events with respect to any Unit which commence after such Unit has been returned to the Lessor in accordance with § 14 hereof, (c) caused by the violation by such indemnified party of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any written misrepresentation, violation or act of the Lessee) or (d) arising from the breach of an

express duty, obligation, representation or warranty of such indemnified party made herein or in any of the documents related to the transactions contemplated hereby.

Upon request by the Lessor, the Lessee will prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns except as required by the provisions of § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for five business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Owner Trustee or the Owner Participant pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

(E) any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insol-

veny laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(F) an event of default set forth in Article 15 of the Security Documentation shall have occurred as a result of any default by the Lessee in performing any of its obligations hereunder or under the Consent;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor

shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6.27% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of

any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee agrees to furnish the Vendee, the Beneficiary and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and meet the standards then required for a third party purchaser or third party lessee to immediately operate such Unit without further inspection, repair, replacement, alterations or improvements (excluding third party peculiar requirements for compatibility with then existing third party products, equipment or facilities) under the Interchange Rules of the

Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or any of its affiliates or, at the expense of the Lessee, on any other storage tracks, as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on any lines of railroad or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 45 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .027845% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall not be assignable in whole or in part by the Lessor without the consent of the Lessee, which consent shall not be unreasonably withheld except as provided in Article VII of the Trust Agreement. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns including the Vendor, except as may be limited in any assignment thereof.

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the Security Documentation, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except and then only so long as the Lessee shall not then be in default under this Lease (and subject to this Lease and to the rights of the Lessor hereunder, and without releasing the Lessee from its obligations hereunder), to an Affiliate, or under a written sublease to a railroad classified by the Interstate Commerce Commission as a Class I railroad or to a major Canadian railroad or any other responsible company, as determined by the Lessee, subject in each case to the written consent of the Lessor, which shall not be unreasonably withheld; and the Lessee shall not, without such written consent, except as provided in this § 12 part with the possession of, or suffer or allow to pass out of its possession or control, any of the Units. The Lessor hereby consents to such a sublease to Dow Chemical of Canada, Limited. For the purpose of this § 12, "Affiliate" shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control" (including controlled by and under common control with)", as

used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Lessor in respect of the Units covered by such sublease in the event of the happening of an Event of Default. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate or upon lines over which the Lessee or any such Affiliate has or obtains trackage or other operating rights or over which railroad equipment of the Lessee or any such Affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America and Canada. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

§ 13. Renewal Option and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six

months nor more than twelve months prior to the end of the original term elect to extend the term of this Lease in respect of all (but not fewer than all) the Units in any Group of Units (as defined in § 7 hereof) then covered by this Lease, for one additional six-year period commencing on the scheduled expiration of the original term at a "Fair Market Rental" payable in semiannual payments on each semi-annual anniversary of the original term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 40 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such

latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Lessor elects to sell any Units to third parties within a period of one year after the expiration of the original or any extended term of this Lease, the Lessee shall be given 60 days' prior written notice of such intention prior to the expiration of such period. In the event that during such one-year period the Lessor shall receive a bona fide offer from another party unrelated to the Lessee to purchase the Units and the Lessor elects to sell the Units pursuant to such offer, the Lessor shall give prompt written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party to the Lessor. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party. The Lessee may exercise such purchase right by delivery to the Lessor of a written notice within 15 days of receipt of notice of the proposed sale from the Lessor specifying a date of purchase, which date shall not be later than 20 days after the date of delivery of such notice by the Lessee to the Lessor.

§ 14. Return of Units upon Expiration of Term.

As soon as practicable but not longer than 60 days after the expiration of the original or extended term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of each Unit to the Lessor upon such storage tracks of the Lessee (at not more than three locations) as the Lessee may designate or on such other tracks as the Lessee and the Lessor may designate by mutual agreement and permit the Lessor to store such Unit on such

tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to the nearest railroad interconnection, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period, the Lessee will, at its own cost and expense, insure, maintain and keep each Unit in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards in effect upon the expiration of this Lease required for a third party purchaser or third party lessee to immediately operate such Unit without further inspection, repair, replacement, alterations or improvements (excluding third party peculiar requirements for compatibility with then existing third party products, equipment or facilities) under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 45 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .027845% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and each assignment hereof or thereof to be filed and recorded with (i) the Interstate Commerce Commission pursuant to 49 U.S.C.

§ 11303, (ii) in the applicable offices of British Columbia, Alberta, Saskatchewan, Ontario, Manitoba and Pictou County, Nova Scotia, and (iii) in the applicable office of each other county, province or territory in which any Unit will be used, subject to the proviso set forth in the next sentence. The Lessee will undertake, at its own expense, the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; provided, however, that the Lessee shall not be required to take any such action in respect of the jurisdictions referred to in clause (iii) above if (1) the Lessee deems such action to be unduly burdensome, (2) if after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title of the Lessor to, and the security interest of the Vendor in, Units having a fair market value of not less than 85% of all the Units then subject to this Lease and (3) any Unit at any time located in such jurisdiction shall have been marked with markings specified in § 5 hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording required by clause (iii) above, and an appropriate opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to the greater of (a) 11-7/8% per annum or (b) 2-1/2% above the rate per annum equal to the fluctuating base rate charged by New England Merchants National Bank to substantial and responsible commercial borrowers as such base rate shall change from time to time, each change in such rate to become effective on the effective date of each change in such base rate as announced by such Bank, on the overdue rentals and

other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy to the Beneficiary and to GATX Leasing Corporation at such addresses as they shall have furnished for such purpose; and

(b) if to the Lessee, at 2030 Dow Center, Midland, Michigan 48640, Attention of Corporate Treasury Department;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at Two Hopkins Plaza, P. O. Box 2258, Baltimore, Maryland 21203, Attention of Corporate Trust Department.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement, this Lease exclusively and completely states the rights and obligations of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original, and all other counterparts shall be deemed duplicates thereof. Although for

convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Michigan; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the markings of the units of Equipment.

§ 21. No Guaranty of Conditional Sale Indebtedness or Residual Value. Nothing in this Lease is intended or shall be construed to constitute a guaranty by the Lessee of the Conditional Sale Indebtedness of the Vendee under the Security Documentation or a guaranty of the residual value of any Unit.

§ 22. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, undertakings and agreements herein made on the part of the Lessor, are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Lease is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of gross negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiary on account of this Lease or on account of any representation, warranty, undertaking or agreement of the Lessor or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee, the Vendor and by all persons

claiming by, through or under either of them.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

THE DOW CHEMICAL COMPANY,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Lessor as aforesaid,

by

\_\_\_\_\_

Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_

Authorized Officer

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF MIDLAND, )

On this            day of            1979 before me personally  
appeared            , to me personally known, who, being  
by me duly sworn, says that he is the            of THE  
DOW CHEMICAL COMPANY, that one of the seals affixed to the  
foregoing instrument is the corporate seal of said corporation,  
that said instrument was signed and sealed on behalf of said  
corporation by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument  
was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this            day of            1979 before me personally  
appeared            , to me personally known, who, being  
by me duly sworn, says that he is an Authorized Officer of THE  
CONNECTICUT BANK AND TRUST COMPANY, that one of the seals  
affixed to the foregoing instrument is the corporate seal of  
said corporation and that said instrument was signed and  
sealed on behalf of said corporation by authority of its  
Board of Directors and he acknowledged that the execution of  
the foregoing instrument was the free act and deed of said  
corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE

Type	Department of Transport Designation	Builder's Specifications	Builder's Plant	Quantity	Road Numbers (Both Inclusive)	Estimated Unit Base Price	Estimated Total Base Price	Estimated Time and Place of Delivery
Hawker-Siddeley								
Caustic Soda Cars	111-A-100W-1	Engineering Tank Car Data Sheet No. B-219 dated June 23, 1978, and General Arrangement Drawing No. A154F119 dated December 2, 1978.	Trenton, Nova Scotia	95	CEBX 6000, 6004, 6006, 6008, 6011-6018, 6023, 6025, 6026, 6029-6031 6033-6109	\$ Can. 53,426.05	\$ Can. 5,075,474.75	May-June 1979, F.O.B. at Builder's plant, Trenton, Nova Scotia.
<u>Procor</u>								
Vinyl Chloride Monomer Cars	105-A-300W	106/3	Sarnia, Ontario	22	DCLX 1075-1093, 1095-1097	60,251	1,325,522	May-June 1979, at Sarnia, Ontario.
Vinyl Chloride Monomer Cars	105-A-300W	106/3	Sarnia, Ontario	7	DCLX 1094, 1098-1103	61,332	429,324	May-June 1979, at Sarnia, Ontario.
Chlorine Cars	105-A-500W	108/2	Sarnia, Ontario	11	DCLX 3000-3008, 3010, 3011	60,850	669,350	May-June 1979, at Sarnia, Ontario.
Chlorine Cars	105-A-500W	108/2	Sarnia, Ontario	15	DCLX 3009, 3012-3025	62,060	930,900	May-June 1979, at Sarnia, Ontario.
				<u>150</u>			<u>\$ Can. 8,430,570.75</u>	

## SCHEDULE B TO LEASE

## Casualty and Termination Values

<u>Payment Date</u>	<u>Percentage</u>
January 2, 1980	111.499
July 2, 1980	112.607
January 2, 1981	113.022
July 2, 1981	113.627
January 2, 1982	114.115
July 2, 1982	114.474
January 2, 1983	114.725
July 2, 1983	114.859
January 2, 1984	114.890
July 2, 1984	114.806
January 2, 1985	114.623
July 2, 1985	114.330
January 2, 1986	113.942
July 2, 1986	113.450
January 2, 1987	112.872
July 2, 1987	112.255
January 2, 1988	111.606
July 2, 1988	110.924
January 2, 1989	110.205
July 2, 1989	109.450
January 2, 1990	108.541
July 2, 1990	106.518
January 2, 1991	104.394
July 2, 1991	102.163
January 2, 1992	99.820
July 2, 1992	97.359
January 2, 1993	94.775
July 2, 1993	92.062
January 2, 1994	89.212
July 2, 1994	86.220
January 2, 1995	83.079
July 2, 1995	79.781
January 2, 1996	76.319
July 2, 1996	72.684
January 2, 1997	68.868
July 2, 1997	65.061
January 2, 1998	61.597
July 2, 1998	58.094
January 2, 1999	54.535
July 2, 1999	50.890
January 2, 2000	47.111

ANNEX D  
to  
Conditional Sale Agreements

ASSIGNMENT OF LEASE AND AGREEMENT dated as of April 15, 1979 (this "Assignment"), by and between THE CONNECTICUT BANK AND TRUST COMPANY not individually but solely in its capacity as Owner Trustee (the "Lessor" or the "Vendee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with NEMLC Leasing Associates No. 1 (the "Beneficiary"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

WHEREAS the Vendee is entering into separate Conditional Sale Agreements dated as of the date hereof (the "Security Documentation") with each of Hawker Siddeley Canada, Ltd., and Procor Limited (the "Builders"), providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in the Annexes B thereto as are delivered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and The Dow Chemical Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS in order to provide security for the obligations of the Lessor under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Lessor agrees to assign to the Vendor for security purposes the Lessor's rights in, to and under the Lease;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee

under the Security Documentation, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, termination payment, indemnity, liquidated damages, or otherwise (the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease; provided that Payments shall not include any indemnity payable to the Lessor in its individual capacity or to the Beneficiary (as defined in the Lease) under § 6 or § 9 of the Lease, which shall be paid directly to the party to receive the same. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation, and, so long as no event of default shall have occurred and be continuing under the Security Documentation, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall forthwith notify the Lessor by telephone (confirmed in writing) or telegraph at the address set forth in the Lease; provided, however, that the failure of the Vendor so to notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease, and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all claims, liens, charges or security interests (other than

created by the Security Documentation) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Documentation or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) which, if unpaid, would become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments equal or superior to the Vendor's interest therein, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will, from time to time, execute, acknowledge and deliver any and all further instruments required by law as reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the markings of the units of Equipment.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Documentation,

or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no Event of Default under the Lease or event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the Security Documentation, the Lessor may, so long as no event of default under the Security Documentation or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce or avail itself of, such rights, powers, privileges and remedies arising out of subparagraph (a) of the first paragraph of § 10 of the Lease; provided, however, the Lessor shall not, without the prior written consent of the Vendor, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of subparagraph (b) of said § 10.

12. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof) (a) the terms of this Assignment shall not impose any obligations on the Lessor in addition to the obligations of the Lessor under the Lease or under the Security Documentation or in any way limit the effect of the last paragraph of Article 4 of the Security Documentation, Article 21 of the Security Documentation or Section 22 of the Lease, and (b) so long as there is no event of default under the Security Documentation, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the Security Documentation, the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the Security Documentation, or empower the Vendor in any way to waive or release the Lessee's obligation to pay such excess amounts, and the Lessor shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts, but shall not take any action under subparagraph (b) of Section 10 of the Lease without the written con-

sent of the Vendor, and (c) each and all of the representations, warranties, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said Bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by said Bank solely in the exercise of its powers expressly conferred upon it as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Bank, except for wilful misconduct or gross negligence, or against any Beneficiary under the Trust Agreement or on account of any representation, warranty, undertaking or agreement herein of the Lessor or any Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Owner Trustee as  
aforesaid,

by

\_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, as Agent,

by

[Corporate Seal]

\_\_\_\_\_  
Assistant Vice President

Attest:

\_\_\_\_\_  
Assistant Corporate  
Trust Officer



## CONSENT AND AGREEMENT

The undersigned, THE DOW CHEMICAL COMPANY, a Delaware corporation (the "Lessee"), the Lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all Payments (as defined in the Lease Assignment) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Lease Assignment, by bank wire transfer of Federal funds by 11:00 a.m. Baltimore time to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent's Account No. 52076-1, with a request that The Annapolis Banking and Trust Company advise Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that the funds are "RE: Dow 4/15/79 No. 1" (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of Michigan and, for all purposes, shall be construed in accordance with the laws of said State.

THE DOW CHEMICAL COMPANY,

by

[Corporate Seal]

Attest:

\_\_\_\_\_